

## § 779.22

(2) In connection with the operation of a street, suburban, or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit).

A discussion of the scope and application of this added language is contained in part 776 of this chapter.

### § 779.22 Enterprise engaged in commerce or in the production of goods for commerce.

The portions of the former and present definitions of “enterprise engaged in commerce or in the production of goods for commerce” (contained in section 3(s) of the Act prior to the 1966 amendments and as amended in 1966) which are important to a determination of the application of provisions of the Act to employees employed by retailers generally and by certain retail or service establishments are as follows:

Previous coverage (prior to the 1966 amendments):

(s) Enterprise engaged in commerce or in the production of goods for commerce means any of the following in the activities of which employees are so engaged, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person:

(1) Any such enterprise which has one or more retail or service establishments if the annual gross volume of sales of such enterprise is not less than \$1 million, exclusive of excise taxes at the retail level which are separately stated and if such enterprise purchases or receives goods for resale that move or have moved across State lines (not in deliveries from the reselling establishment) which amount in total annual volume to \$250,000 or more;

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(5) Any gasoline service establishment if the annual gross volume of sales of such establishment is not less than \$250,000, exclusive of excise taxes at the retail level which are separately stated:

*Provided*, That an establishment shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce, or a part of an enterprise engaged in commerce or in the production of goods for commerce, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume

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of sales of any enterprise for the purpose of this subsection, if the only employees of such establishment are the owner thereof or persons standing in the relationship of parent, spouse, or child of such owner.

New coverage (beginning with the 1966 amendments):

(s) *Enterprise engaged in commerce or in the production of goods for commerce* means an enterprise which has employees engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person, and which:

(1) During the period February 1, 1967, through January 31, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated) or is a gasoline service establishment whose annual gross volume of sales is not less than \$250,000 (exclusive of excise taxes at the retail level which are separately stated), and beginning February 1, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than \$250,000 (exclusive of excise taxes at the retail level which are separately stated);

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(4) Is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, an elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit).

Any establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

### § 779.23 Establishment.

As used in the Act, the term *establishment*, which is not specially defined therein, refers to a “distinct physical place of business” rather than to “an entire business or enterprise” which may include several separate places of business. This is consistent with the meaning of the term as it is normally